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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/809,273

03/16/2001

Hiroyuki Nishii

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04/01/2008

SUGHRUE-265550

2100 PENNSYLVANIA AVE. NW

WASHINGTON, DC 20037-3213

EXAMINER

GARRETT, DAWN L

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

04/01/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/809,273	<b>Applicant(s)</b> NISHII ET AL.	
	<b>Examiner</b> Dawn L. Garrett	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4,10,12,13,15 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4,10,12,13,15 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 17, 2008 has been entered. Claims 1-3, 5-9, 11, 14, 16 and 18 are canceled. Claims 4 and 10 were amended. Claims 4, 10, 12, 13, 15, and 17 are pending and under consideration.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 4, 10, 12, 13, 15, and 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

It is not seen where the specification sets forth or describes the word "flat" to describe the sheets of the container. In the remarks filed March 17, 2008, applicant's representative states "Claims 4 and 10 have been amended to recite that the sheets

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forming the claimed container are flat based on, for example, the Figures and associated disclosure in the specification.” The examiner notes the Figures show sheets that are curved and/or formed to have corners. Clear support for the word "flat" as applicant intends to describe the sheets has not be located within the specification. Accordingly, “flat” is considered to be new matter.

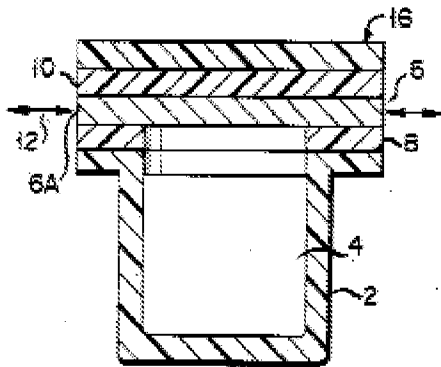
***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

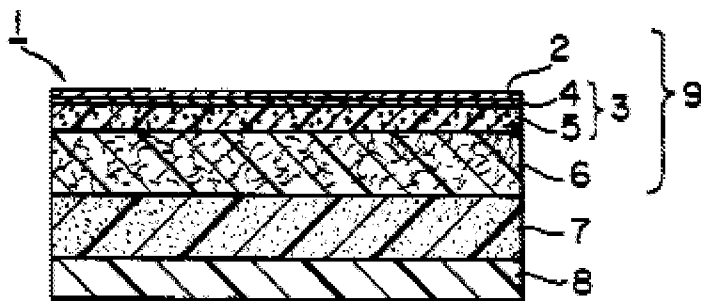
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 4 and 13 are again rejected under 35 U.S.C. 102(b) as being anticipated by Wakamatsu et al. (US 4,667,814). Wakamatsu et al. discloses an oxygen absorbent packet comprising a plastic sheet (2) (“non-porous sheet”), adhesive (8) to seal (2) and (6), an air-permeable non-woven sheet (6) (see col. 2, lines 43-45; the “reinforcing layer” of “porous sheet”), an air-impermeable layer that may have pores (10)(see col. 3, lines 39-44; the “porous layer” of the “porous sheet”) and an aluminum foil covering (14) (alternatively also a “non-porous sheet”). Oxygen absorbent (4) is held in the container (per instant claim 13). See Figures 1 and 2.



Sheet (2) is considered to be a "flat" sheet that is shaped. This is the same type of sheet formation depicted in instant Figures 1 and 6. Accordingly, the reference is considered to meet the claim requirements of a "flat" sheet.

6. Claims 4 and 13 are again rejected under 35 U.S.C. 102(b) as being anticipated by Yamada et al. (US 5,143,763). Yamada et al. discloses containers comprising an oxygen scavenger laminate (see abstract). Figure 1 shows an oxygen absorber (7), a non-woven fabric layer (6) ("reinforcing layer"), a porous membrane (3) ("porous layer"), a non-porous layer (2) and a laminate layer (8) having gas barrier properties ("non-porous layer"). See col. 16, lines 28-35.



Although Yamada et al. teaches a laminate, the sheets are considered to be attached at their end portions. Furthermore, the oxygen absorber (7) is within the layers. The

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claims do not require that the “container” have a particular shape or have a hollow space.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 15 is again rejected under 35 U.S.C. 103(a) as being unpatentable over Wakamatsu et al. (US 4,667,814). Wakamatsu et al. is relied upon as set forth above for the rejection of claim 4. Wakamatsu et al. fails to teach expressly the combined average pore size of the air-permeable non-woven sheet (6) (see col. 2, lines 43-45; the “reinforcing layer” of “porous sheet”) and the air-impermeable layer that may have pores (10)(see col. 3, lines 39-44; the “porous layer” of the “porous sheet”) to form the “porous sheet”. Wakamatsu et al. does teach if a microporous film is used the pore size should range from 0.01 to 50 micrometers (see col. 2, lines 67-68) and that small pores are desirable (see col. 3, lines 39-43). It would have been obvious to one of ordinary skill in the art to have formed the sheet (6) and sheet (10) having pore sizes within the range of claim 15, because one would expect such a pore size to allow the desired amount of water and/or gases to pass through. Optimization of the pore size would result in allowing the desired amount of water and/or gases to pass through. Furthermore, the experimental modification of this prior art in order to ascertain optimum operating conditions fails to render applicants’ claims patentable in the absence of unexpected

results. *In re Aller*, 105 USPQ 233. A prima facie case of obviousness may be rebutted where the results of the optimizing variable, which is known to be result-effective, are unexpectedly good. *In re Boesch and Slaney*, 205 USPQ 215.

9. Claim 15 is again rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada et al. (US 5,143,763). Yamada et al. is relied upon as set forth above for the rejection of claim 4. Yamada et al. fails to teach expressly the combined average pore size of the “reinforcing layer” (6) and the “porous layer” (3, 4 or 5) for the “porous sheet”. Yamada et al. does teach the dense skin layer has a pore size of up to 0.5 micrometers (see col. 7, lines 14-15) and that porosity affects the oxygen permeation rate (see col. 7, lines 36-62). It would have been obvious to one of ordinary skill in the art to have formed the sheets (3) and (6) having pore sizes within the range of claim 15, because one would expect such a pore size to allow the desired amount of water and/or gases to pass through. Optimization of the pore size would result in allowing the desired amount of water and/or gases to pass through. Furthermore, the experimental modification of this prior art in order to ascertain optimum operating conditions fails to render applicants’ claims patentable in the absence of unexpected results. *In re Aller*, 105 USPQ 233. A prima facie case of obviousness may be rebutted where the results of the optimizing variable, which is known to be result-effective, are unexpectedly good. *In re Boesch and Slaney*, 205 USPQ 215.

10. Claims 10, 12, and 17 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Wakamatsu et al. (US 4,667,814) in view of Biebuyck et al. (US 5,734,225). Wakamatsu et al. discloses an oxygen absorbent packet comprising a

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plastic sheet (2) ("non-porous sheet"), adhesive (8) to seal (2) and (6), an air-permeable non-woven sheet (6) (see col. 2, lines 43-45; the "reinforcing layer" of "porous sheet"), an air-impermeable layer that may have pores (10)(see col. 3, lines 39-44; the "porous layer" of the "porous sheet") and an aluminum foil covering (14) (alternatively also a "non-porous sheet"). Oxygen absorbent (4) is held in the container (per instant claim 13. See Figures 1 and 2. Wakamatsu et al. describe the packaging as being useful for sealing items to protect from oxygen, but fails to teach the packaging could be used to protect an organic electroluminescent device. Biebuyck et al. discuss the importance of protecting an organic electroluminescent device from oxidation by encapsulating the device (see col. 1, lines 7-37 and col. 2, lines 43-44) and further describes it is desirable to have a protective film directly adjacent the EL device (see col. 2, lines 53-61). It would have been obvious to one of ordinary skill in the art at the time of the invention to have used the oxygen scavenger packet taught by Wakamatsu et al. as part of a container for an organic electroluminescent device, because Wakamatsu et al. teach the film contains an antioxidant for protection against oxidation and Biebuyck et al. teach organic electroluminescent devices need packaging in order to protect the devices from oxidation and subsequent limited lifetime of the device due to oxidation.

Wakamatsu et al. fails to teach expressly the combined average pore size of the air-permeable non-woven sheet (6) (see col. 2, lines 43-45; the "reinforcing layer" of "porous sheet") and the air-impermeable layer that may have pores (10)(see col. 3, lines 39-44; the "porous layer" of the "porous sheet") to form the "porous sheet". Wakamatsu et al. does teach if a microporous film is used the pore size should range from 0.01 to



50 micrometers (see col. 2, lines 67-68) and that small pores are desirable (see col. 3, lines 39-43). It would have been obvious to one of ordinary skill in the art to have formed the sheet (6) and sheet (10) having pore sizes within the range of claim 17, because one would expect such a pore size to allow the desired amount of water and/or gases to pass through. Optimization of the pore size would result in allowing the desired amount of water and/or gases to pass through. Furthermore, the experimental modification of this prior art in order to ascertain optimum operating conditions fails to render applicants' claims patentable in the absence of unexpected results. *In re Aller*, 105 USPQ 233. A prima facie case of obviousness may be rebutted where the results of the optimizing variable, which is known to be result-effective, are unexpectedly good. *In re Boesch and Slaney*, 205 USPQ 215.

11. Claims 10, 12, and 17 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada et al. in view of Biebuyck et al. (US 5,734,225). Yamada et al. discloses containers comprising an oxygen scavenger laminate (see abstract). Figure 1 shows an oxygen absorber (7), a non-woven fabric layer (6) ("reinforcing layer"), a porous membrane (3) ("porous layer"), a non-porous layer (2) and a laminate layer (8) having gas barrier properties ("non-porous layer"). See col. 16, lines 28-35. Yamada et al. describe the packaging as being useful for sealing items to protect from oxygen, but fails to teach the packaging could be used to protect an organic electroluminescent device. Biebuyck et al. discuss the importance of protecting an organic electroluminescent device from oxidation by encapsulating the device (see col. 1, lines 7-37 and col. 2, lines 43-44) and further describes it is desirable to have a

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protective film directly adjacent the EL device (see col. 2, lines 53-61). It would have been obvious to one of ordinary skill in the art at the time of the invention to have used the oxygen scavenger packet taught by Yamada et al. as part of a container for an organic electroluminescent device, because Yamada et al. teach the film contains an antioxidant for protection against oxidation and Biebuyck et al. teach organic electroluminescent devices need packaging in order to protect the devices from oxidation and subsequent limited lifetime of the device due to oxidation.

Yamada et al. fails to teach expressly the combined average pore size of the “reinforcing layer” (6) and the “porous layer” (3, 4 or 5) for the “porous sheet”. Yamada et al. does teach the dense skin layer has a pore size of up to 0.5 micrometers (see col. 7, lines 14-15) and that porosity affects the oxygen permeation rate (see col. 7, lines 36-62). It would have been obvious to one of ordinary skill in the art to have formed the sheets (3) and (6) having pore sizes within the range of claim 17, because one would expect such a pore size to allow the desired amount of water and/or gases to pass through. Optimization of the pore size would result in allowing the desired amount of water and/or gases to pass through. Furthermore, the experimental modification of this prior art in order to ascertain optimum operating conditions fails to render applicants’ claims patentable in the absence of unexpected results. *In re Aller*, 105 USPQ 233. A prima facie case of obviousness may be rebutted where the results of the optimizing variable, which is known to be result-effective, are unexpectedly good. *In re Boesch and Slaney*, 205 USPQ 215.

***Response to Arguments***

12. Applicant's arguments filed March 17, 2008 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "flat" (planar) sheets that are not curved or shaped or a container that has an open portion and is not a laminate) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to the "flat" sheet limitation, as noted in the above prior art rejection, Wakamatsu shows the same type of curved/shaped sheet formation depicted in instant Figures 1 and 6. The sheet (2) depicted by Wakamatsu is considered to be flat. Accordingly, the reference is considered to meet the claim requirements of a "flat" sheet.

With respect to Yamada, the claims do not exclude the two flat sheets from being separated by other layers where they are joined at their peripheries. Also, the claims do not exclude a laminate. A hollow-type container comprising a removing agent is not expressly claimed. The removing agent taught by Yamada is considered to be contained within the sheets, which comprise a "container".

***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dawn L. Garrett whose telephone number is (571) 272-1523. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dawn Garrett/  
Primary Examiner, Art Unit 1794